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GOLDEN HARVEST INVESTMENT AND TRADING, INC.

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 GUCCI AMERICA, INC., a New York corporation,

14 Plaintiff,

15 v.

16 GOLDEN HARVEST INVESTMENT AND
TRADING, INC., a California corporation; TNL
17 aka T & L T SHIRT, an entity of unknown make-up;
CYNTHIA CHAN KING, an individual, dba
18 CHANS ART & GIFTS dba CHAN & ART &
GIFTS dba CHAN'S ART & GIFTS dba CHAN
19 ART GIFTS; DOE 1 doing business at 615 GRANT
AVENUE, an entity of unknown make-up; and
20 DOES 2-10,

21 Defendants.
22

CASE NO. CV13-01197 NC

ANSWER TO COMPLAINT

DEMAND FOR JURY TRIAL

23 COMES NOW Defendant GOLDEN HARVEST INVESTMENT AND TRADING, INC.
24 (hereinafter "DEFENDANT") to herewith answer the Complaint:

25 1. Answering Paragraph 1 of Plaintiff's Complaint, DEFENDANT is without
26 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
27 said paragraph, and, on that basis, denies the allegations contained therein.

28 2. Answering Paragraph 2 of Plaintiff's Complaint, DEFENDANT denies the

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1 allegations contained therein.

2 3. Answering Paragraph 3 of Plaintiff's Complaint, DEFENDANT admits the
3 allegations contained therein.

4 4. Answering Paragraph 4 of Plaintiff's Complaint, DEFENDANT is without
5 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
6 said paragraph, and, on that basis, denies the allegations contained therein.

7 5. Answering Paragraph 5 of Plaintiff's Complaint, DEFENDANT admits that
8 Golden Harvest Investment and Trading, Inc., is a California corporation and denies the
9 remaining allegations contained therein.

10 6. Answering Paragraph 6 of Plaintiff's Complaint, DEFENDANT is without
11 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
12 said paragraph, and, on that basis, denies the allegations contained therein.

13 7. Answering Paragraph 7 of Plaintiff's Complaint, DEFENDANT is without
14 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
15 said paragraph, and, on that basis, denies the allegations contained therein.

16 8. Answering Paragraph 8 of Plaintiff's Complaint, DEFENDANT is without
17 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
18 said paragraph, and, on that basis, denies the allegations contained therein.

19 9. Answering Paragraph 9 of Plaintiff's Complaint, DEFENDANT denies the
20 allegations contained therein.

21 10. Answering Paragraph 10 of Plaintiff's Complaint, DEFENDANT denies the
22 allegations contained therein.

23 11. Answering Paragraph 11 of Plaintiff's Complaint, DEFENDANT denies the
24 allegations contained therein.

25 12. Answering Paragraph 12 of Plaintiff's Complaint, DEFENDANT is without
26 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
27 said paragraph, and, on that basis, denies the allegations contained therein.

28 13. Answering Paragraph 13 of Plaintiff's Complaint, DEFENDANT is without

1 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
2 said paragraph, and, on that basis, denies the allegations contained therein.

3 14. Answering Paragraph 14 of Plaintiff's Complaint, DEFENDANT is without
4 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
5 said paragraph, and, on that basis, denies the allegations contained therein.

6 15. Answering Paragraph 15 of Plaintiff's Complaint, DEFENDANT is without
7 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
8 said paragraph, and, on that basis, denies the allegations contained therein.

9 16. Answering Paragraph 16 of Plaintiff's Complaint, DEFENDANT is without
10 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
11 said paragraph, and, on that basis, denies the allegations contained therein.

12 17. Answering Paragraph 17 of Plaintiff's Complaint, DEFENDANT is without
13 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
14 said paragraph, and, on that basis, denies the allegations contained therein.

15 18. Answering Paragraph 18 of Plaintiff's Complaint, DEFENDANT is without
16 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
17 said paragraph, and, on that basis, denies the allegations contained therein.

18 19. Answering Paragraph 19 of Plaintiff's Complaint, DEFENDANT is without
19 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
20 said paragraph, and, on that basis, denies the allegations contained therein.

21 20. Answering Paragraph 20 of Plaintiff's Complaint, DEFENDANT denies the
22 allegations contained therein.

23 21. Answering Paragraph 21 of Plaintiff's Complaint, DEFENDANT denies the
24 allegations contained therein.

25 22. Answering Paragraph 22 of Plaintiff's Complaint, DEFENDANT denies the
26 allegations contained therein.

27 23. Answering Paragraph 23 of Plaintiff's Complaint, DEFENDANT denies the
28 allegations contained therein.

1 allegations contained therein.

2 38. Answering Paragraph 38 of Plaintiff's Complaint, DEFENDANT denies the
3 allegations contained therein.

4 **COUNT II**

5 39. Answering Paragraph 39 of Plaintiff's Complaint, DEFENDANT readopts and
6 reasserts the responses set forth in Paragraphs 1 through 38 above.

7 40. Answering Paragraph 40 of Plaintiff's Complaint, DEFENDANT denies the
8 allegations contained therein.

9 41. Answering Paragraph 41 of Plaintiff's Complaint, DEFENDANT denies the
10 allegations contained therein.

11 42. Answering Paragraph 42 of Plaintiff's Complaint, DEFENDANT denies the
12 allegations contained therein.

13 43. Answering Paragraph 43 of Plaintiff's Complaint, DEFENDANT denies the
14 allegations contained therein.

15 44. Answering Paragraph 44 of Plaintiff's Complaint, DEFENDANT denies the
16 allegations contained therein.

17 45. Answering Paragraph 45 of Plaintiff's Complaint, DEFENDANT denies the
18 allegations contained therein.

19 **AFFIRMATIVE DEFENSES**

20 1. As for a first, separate and distinct affirmative defense to the Complaint, and each
21 and every count therein, this answering DEFENDANT alleges that Plaintiff's Complaint fails to
22 state facts sufficient to constitute a cause of action against DEFENDANT.

23 2. As for a second, separate and distinct affirmative defense to the Complaint, and
24 each and every count therein, this answering DEFENDANT alleges that Plaintiff is barred by the
25 Doctrine of Estoppel.

26 3. As for a third, separate and distinct affirmative defense to the Complaint, and each
27 and every count therein, this answering DEFENDANT alleges that Plaintiff is barred by the
28 Doctrine of Unclean Hands.

1 4. As for a fourth, separate and distinct affirmative defense to the Complaint, and
2 each and every count therein, this answering DEFENDANT alleges that Plaintiff is barred by the
3 Doctrine of Waiver.

4 5. As for a fifth, separate and distinct affirmative defense to the Complaint, and each
5 and every count therein, this answering DEFENDANT alleges that, at all times and places
6 mentioned herein, Plaintiff failed to mitigate the amount of damages. The damages claimed by
7 Plaintiff could have been mitigated by due diligence on Plaintiff's part or by one acting under
8 similar circumstances. The failure to mitigate is a bar to recovery under the Complaint.

9 6. As for a sixth, separate and distinct affirmative defense to the Complaint, and each
10 and every count therein, this answering DEFENDANT alleges that each of the causes of action
11 set forth in the Complaint is barred by the applicable statute of limitations, including, but not
12 limited to, California Code of Civil Procedure §§ 337, 338, 339, 340, 343, California Civil Code
13 § 3426.6, and 17 U.S.C. § 507.

14 7. As for a seventh, separate and distinct affirmative defense to the Complaint, and
15 each and every count therein, this answering DEFENDANT alleges, on information and belief,
16 that the sole and proximate cause of the acts complained of by Plaintiff were due to the acts
17 and/or omissions of persons and entities other than DEFENDANT.

18 8. As for an eighth, separate and distinct affirmative defense to the Complaint, and
19 each and every count therein, this answering DEFENDANT alleges that DEFENDANT's conduct
20 was not the cause in fact or the proximate cause of any of the losses alleged by Plaintiff.

21 9. As for a ninth, separate and distinct affirmative defense to the Complaint, and each
22 and every count therein, this answering DEFENDANT alleges that the causes of action set forth
23 in the Complaint are, and each of them is, barred in whole or in part by the privilege of fair
24 competition.

25 10. As for a tenth, separate and distinct affirmative defense to the Complaint, and each
26 and every count therein, this answering DEFENDANT alleges that Plaintiff was negligent,
27 careless, reckless, or otherwise at fault in and about the matters alleged in the Complaint.

28 11. As for an eleventh, separate and distinct affirmative defense to the Complaint, and
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1 each and every count therein, this answering DEFENDANT alleges Plaintiff's actions are barred
2 by an implied license.

3 12. As for a twelfth, separate and distinct affirmative defense to the Complaint, and
4 each and every count therein, this answering DEFENDANT alleges that this Court lacks proper
5 venue.

6 13. As for a thirteenth, separate and distinct affirmative defense to the Complaint, and
7 each and every count therein, this answering DEFENDANT alleges that the Trademark
8 Registrations alleged in the Complaint were improperly filed, if they were filed at all.

9 14. As for a fourteenth, separate and distinct affirmative defense to the Complaint, and
10 each and every count therein, this answering DEFENDANT alleges that Plaintiff's alleged
11 trademarks are weak and were not infringed.

12 15. As for a fifteenth, separate and distinct affirmative defense to the Complaint, and
13 each and every count therein, this answering DEFENDANT alleges that Plaintiff is barred by the
14 Doctrine of Laches.

15 16. As for a sixteenth, separate and distinct affirmative defense to the Complaint, and
16 each and every count therein, this answering DEFENDANT alleges that Plaintiff's claims are
17 barred as the trademarks in question are invalid and/or have lost any trademark protection that
18 they might have had.

19 17. As for a seventeenth, separate and distinct affirmative defense to the Complaint,
20 and each and every count therein, this answering DEFENDANT alleges that Plaintiff's claims are
21 invalid as there has been no actual infringement.

22 18. As for an eighteenth, separate and distinct affirmative defense to the Complaint,
23 and each and every count therein, this answering DEFENDANT alleges that Plaintiff's claims are
24 barred by the First Sale Doctrine.

25 19. As for a nineteenth, separate and distinct affirmative defense to the Complaint, and
26 each and every count therein, this answering DEFENDANT alleges that its actions constitute
27 normative fair use, thereby invalidating the cause of action set forth in the Complaint.

28 20. As for a twentieth, separate and distinct affirmative defense to the Complaint, and
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1 each and every count therein, this answering DEFENDANT alleges that Plaintiff has abandoned
 2 its alleged rights in the marks by acts which have caused the marks to lose their significance.

3 21. As for a twenty-first, separate and distinct affirmative defense to the Complaint,
 4 and each and every count therein, this answering DEFENDANT alleges that Plaintiff is barred by
 5 the Doctrine of Innocent Intent and that this answering DEFENDANT acted with innocent intent
 6 in the actions which were taken and made reasonable efforts to ensure that it was not required to
 7 obtain additional "permission" for the alleged actions set forth in the Complaint.

8 22. As for a twenty-second, separate and distinct affirmative defense to the Complaint,
 9 and each and every count therein, this answering DEFENDANT alleges that Plaintiff's state law
 10 and/or common law claims, if any, are preempted and/or displaced by federal law.

11 WHEREFORE, this answering DEFENDANT prays for judgment as follows:

- 12 1. That Plaintiff's request for damages be denied.
- 13 2. That Plaintiff's request for injunctive relief be denied;
- 14 3. For reasonable attorney's fees and costs of suit incurred therein; and
- 15 4. For such other and further relief as the Court deems proper.

16 Dated: April 15, 2013

TINGLEY PIONTKOWSKI LLP

17
 18 By: 

19 KEVIN P. O'BRIEN
 20 Attorneys for Defendant
 21 GOLDEN HARVEST INVESTMENT
 22 AND TRADING INC.

DEMAND FOR JURY TRIAL

DEFENDANT hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Court.

Dated: April 15, 2013

TINGLEY PIONTKOWSKI LLP

By: 

KEVIN P. O'BRIEN
Attorneys for Defendant
GOLDEN HARVEST INVESTMENT
AND TRADING INC.